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U.S. Department of Justice

Environment and Natural Resources Division

ESF

90-11-3-07683/2

Environmental Enforcement Section

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September 2, 2004

Clerk of Court
United States Bankruptcy Court
for the Northern District of California
Oakland Division
1300 Clay Street
Suite 300
Oakland, CA 94612

Re: Hexcel Corporation
Case No. 93-48535 T

Hexcel Corporation v. New Jersey Department of
Environmental Protection; and United States
Environmental Protection
A.P. No. 04 4246

Dear Clerk,

Enclosed for filing, please find an original and two copies of the United States Environmental Protection Agency's Answer to Complaint regarding the above referenced matter. Please contact me at (202) 514-3483 with any questions you might have. Thank you.

Very truly yours,

Elise S. Feldman
Trial Attorney

Enclosures

cc: Steven L. Johnson, AUSA N.D.CA
Kedari Reddy, US EPA Region II
Joan Olawsi-Stiener, Deputy Attorney General
Katherine D. Ray, Goldberg, Stinnett, Meyers & Davis
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SEP -3 2004

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12 United States of America

13 UNITED STATES BANKRUPTCY COURT

14 NORTHERN DISTRICT OF CALIFORNIA

15 OAKLAND DIVISION

16 In re:) Case No. 93-48535 T
17)

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HEXCEL CORPORATION,
Reorganized Debtor

HEXCEL CORPORATION,

Plaintiff,
v.

Adversary Proceeding
No. 04-4246

ANSWER TO COMPLAINT

NEW JERSEY DEPARTMENT OF
ENVIRONMENTAL PROTECTION; and
UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY,

Defendants.

1 Defendant UNITED STATES ENVIRONMENTAL PROTECTION AGENCY,
2 ("EPA") by authority of the Attorney General of the United States
3 of America, and through the undersigned counsel, hereby asserts
4 its defenses and answer to the Complaint to Determine Discharge
5 of Claims, for Declaratory Relief, and for Injunctive Relief as
6 follows:

7 1. Paragraph 1 consists of conclusions of law to which
8 no response is required.

9 2. Paragraph 2 consists of conclusions of law to which
10 no response is required.

11 3. Paragraph 3 consists of a conclusion of law to which
12 no response is required.

13 4. Paragraph 4 consists of conclusions of law to which
14 no response is required.

15 5. Paragraph 5 relates to Debtor's claims against the
16 New Jersey Department of Environmental Protection, ("NJDEP"), not
17 against EPA and as such, no response is required.

18 6. In Paragraph 6, the Debtor attempts to characterize the
19 statutory responsibilities of EPA. EPA admits the assertions in
20 Paragraph 6 only to the extent that it agrees that EPA is a
21 federal agency responsible for the enforcement of many of the
22 federal environmental laws, including but not limited to the
23 Comprehensive Environmental Response, Compensation, and Liability
24 Act ("CERCLA"), 42 U.S.C. §§ 9601 et seq.

25 7. EPA admits the assertion in Paragraph 7.

26 8. EPA lacks sufficient knowledge to form a belief as to
27 the truth of the assertions in Paragraph 8 as they pertain to any
28

1 entity other than EPA, and thus denies those assertions. To the
2 extent the assertions in Paragraph 8 pertain to EPA, admits that
3 the Commencement Notice was sent to EPA Region II.

4 9. Paragraph 9 characterizes an order of the court. The
5 order speaks for itself and is the best evidence of its contents.
6 Accordingly, no response is required.

7 10. EPA lacks sufficient knowledge to form a belief as to
8 the truth of the assertions in Paragraph 10 as they pertain to
9 any entity other than EPA, and thus denies those assertions. To
10 the extent the assertions pertain to EPA, EPA is investigating
11 this assertion and accordingly denies the assertion in Paragraph
12 10 subject to this on-going investigation.

13 11. Paragraph 11 pertains to claims against New Jersey
14 Department of Environmental Protection (NJDEP), and further, EPA
15 lacks sufficient knowledge to form a belief as to the truth of
16 the assertions in Paragraph 11, and thus denies those assertions.

17 12. EPA admits the assertions in Paragraph 12 to the
18 extent that Hexcel is the owner of the Lodi Facility property and
19 has been the owner during relevant periods after confirmation of
20 the Plan of Reorganization. EPA lacks sufficient knowledge to
21 form a belief as to the truth of any other assertions Paragraph
22 12, and thus denies those assertions.

23 13. Paragraph 13 pertains to claims against NJDEP, and
24 further, EPA lacks sufficient knowledge to form a belief as to
25 the truth of the assertions in Paragraph 13, and thus denies
26 those assertions.

1 14. EPA lacks sufficient knowledge to form a belief as to
2 the truth of the assertions in Paragraph 14, and thus denies
3 those assertions. Further, whether Hexcel operated as asserted in
4 paragraph 14 is a conclusion of law to which no response is
5 required.

6 15. Paragraph 15 pertains to claims against NJDEP, and
7 further, EPA lacks sufficient knowledge to form a belief as to
8 the truth of the assertions in Paragraph 15, and thus denies
9 those assertions.

10 16. Paragraph 16 pertains to claims against NJDEP, and
11 further, EPA lacks sufficient knowledge to form a belief as to
12 the truth of the assertions in Paragraph 16, and thus denies
13 those assertions.

14 17. EPA denies the assertion set forth in Paragraph 17.

15 18. EPA admits the assertion set forth in Paragraph 18.

16 19. EPA admits the assertion set forth in Paragraph 19.

17 20. Paragraph 20 characterizes an Order by the Court. The
18 Order speaks for itself and is the best evidence of its contents,
19 there is no response required.

20 21. Paragraph 21 characterizes an Order by the Court. The
21 Order speaks for itself and is the best evidence of its contents,
22 there is no response required.

23 22. Paragraph 22 characterizes an Order by the Court. The
24 Order speaks for itself and is the best evidence of its contents,
25 there is no response required.

23. Paragraph 23 characterizes an Order by the Court. The Order speaks for itself and is the best evidence of its contents, there is no response required.

24. Paragraph 24 characterizes a directive of the NJDEP. The directive speaks for itself and is the best evidence of its contents, there is no response required.

25. EPA admits the allegation set forth in Paragraph 25 to the extent that on September 15, 2003 EPA issued a General Notice Letter of Potential Liability under CERCLA ("Notice Letter") to 41 potentially responsible parties excluding the debtor for the Lower Passaic River Study Area portion of the Diamond Alkali Superfund Site ("LPRSA"). EPA issued a Notice Letter to the debtor on February 10, 2004. EPA denies any other assertions in Paragraph 25.

26. EPA hereby reasserts and incorporates its responses to Paragraphs 1 through 24.

27. Paragraph 27 does not pertain to EPA and thus no response is required; further, to the extent a response is required, EPA lacks sufficient knowledge to form a belief as to the truth of the assertions in Paragraph 27, and thus denies those assertions.

28. Paragraph 28 consists of conclusions of law, accordingly no response is required; further, to the extent a response is required, EPA lacks sufficient knowledge to form a belief as to the truth of the assertions in Paragraph 28, and thus denies those assertions.

1 29. Paragraph 29 consists of conclusions of law, and does
2 not relate to EPA, accordingly no response is required; further,
3 to the extent a response is required, EPA lacks sufficient
4 knowledge to form a belief as to the truth of the assertions in
5 Paragraph 29, and thus denies those assertions.

6 30. Paragraph 30 consists of conclusions of law, and does
7 not relate to EPA, accordingly no response is required; further,
8 to the extent a response is required, EPA lacks sufficient
9 knowledge to form a belief as to the truth of the assertions in
10 Paragraph 30, and thus denies those assertions.

11 31. Paragraph 31 consists of conclusions of law, and does
12 not relate to EPA, accordingly no response is required; further,
13 to the extent a response is required, EPA lacks sufficient
14 knowledge to form a belief as to the truth of the assertions in
15 Paragraph 31, and thus denies those assertions.

16 32. EPA hereby reasserts and incorporates its responses to
17 Paragraphs 1 through 24.

18 33. EPA denies the assertions in Paragraph 33.

19 34. Paragraph 34 consists of conclusions of law to which no
20 response is required; furthermore, to the extent a response is
21 required, EPA denies this assertion.

22 35. Paragraph 35 consists of conclusions of law to which no
23 response is required; furthermore, to the extent a response is
24 required, EPA denies this assertion.

25 36. Paragraph 36 consists of conclusions of law and a
26 characterization of the Plan and Confirmation Order, to which no
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28

1 response is required; furthermore, to the extent a response is
2 required, EPA denies this assertion.

3 37. Paragraph 37 consists of conclusions of law to which no
4 response is required; furthermore, to the extent a response is
5 required, EPA denies this assertion.

6 38. EPA hereby reasserts and incorporates its responses to
7 Paragraphs 1 through 24.

8 39. The first sentence of Paragraph 39 consists of
9 conclusions of law to which no response is required; furthermore
10 to the extent a response is required, EPA denies this assertion.
11 To the extent that the second sentence of Paragraph 39
12 characterizes the legal contentions of the Debtor against EPA,
13 EPA denies those assertions. EPA lacks sufficient knowledge to
14 form a belief as to the truth of the assertions in the third
15 sentence of Paragraph 39, and thus denies those assertions except
16 in so far as EPA admits that it disputes assertions of the
17 Debtor.

18 40. Paragraph 40 consists of a conclusion of law to which
19 no response is required; furthermore, to the extent a response is
20 required, EPA denies this assertion.

21 41. EPA hereby reasserts and incorporates its responses to
22 Paragraphs 1 through 24.

23 42. Paragraph 42 consists of conclusions of law to which no
24 response is required; furthermore, to the extent a response is
25 required, EPA denies these assertions as they pertain to EPA.

1 43. Paragraph 43 consists of conclusions of law to which no
2 response is required; furthermore to the extent a response is
3 required, EPA denies these assertions as they pertain to EPA.
4

5 GENERAL DENIAL

6 To the extent any assertion of the complaint remains
7 unanswered, the Federal Defendant denies such assertion.
8

9 PRAYER FOR RELIEF

10 EPA requests that this Court deny Plaintiff's prayer for
11 relief, and dismiss the complaint with prejudice and with costs;
12 enter judgment in favor of the EPA; and award to EPA such other
13 further relief as the Court deems just and proper.
14

15 DEFENSES

16 EPA asserts the following defenses to the claims made in the
17 complaint:

18 44. The Court lacks jurisdiction over the Complaint against
19 EPA because the Complaint seeks impermissible pre-enforcement
20 review in contravention of 42 U.S.C. § 9613(h) and other
21 requirements of ripeness.

22 45. Injunctive orders to remediate pollution or hazards are
23 not dischargeable in bankruptcy.

24 46. Injunctive orders to protect public health and safety
25 are not claims within the meaning of the Bankruptcy Code.

26 47. With respect to Debtor's request for declaratory relief
27 relating to natural resource damages at the Site, EPA is not the
28

1 federal agency with jurisdiction over natural resource trustee
2 issues.

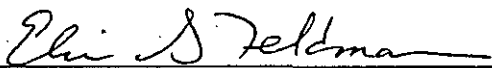
3 48. Debtor's obligations pertaining to pre-petition
4 contamination were not discharged because any liabilities to EPA
5 had not arisen at the time of the bar date.

6 49. Some of Debtor's obligations pertain to post-petition
7 contamination of the Lower Passaic River and were, accordingly,
8 not discharged in bankruptcy.

9 50. Debtor's obligations with respect to the Lodi Facility
10 property were not discharged because the Debtor is the owner of
11 the Lodi Facility property and has been the owner during relevant
12 periods after confirmation of the Plan of Reorganization.

13
14 Respectfully submitted,

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19 Division
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PROOF OF SERVICE

I hereby certify that on this day I served, by overnight carrier, a true copy of the foregoing to the following counsel for the Debtor:

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Date: 9/2/04

Elise S. Feldman

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